

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISCELLANEOUS APPLICATION NO. 373 OF 2006

Shri Prakash B. Borkar
R/o H. No.110, Ward No.6,
Navelim Road,
Margao Goa.

... Applicant

versus

1. Shri Sukhalal Kumar,
R/o H. No.108/3,
Saluzin Cottages,
Mungul Grande,
Margao-Goa.

2. State
Through learned P.P.

... Respondents

Mr. P. P. Singh, Advocate for the Applicant.

Mr. Jose Filipe Melo, Advocate for the Respondent No.1.

Ms. Winnie Coutinho, Public Prosecutor for the Respondent No.2.

CORAM : N. A. BRITTO, J.

DATE : 23RD NOVEMBER, 2006.

ORAL ORDER

Heard the learned Counsel on behalf of the applicant and respondent no.1.

2. This application is filed under Section 482 of the Code (Criminal Procedure Code, 1973) for the following reliefs:-

(A) That matter be treated as compounded between the parties as already done and applicant may kindly be absolved from criminal liability as per the Judgment and Order passed on 23-8-2006 by the Court by reviewing the same in view of subsequent events taken place and in view of the Order dated 11-10-2006 passed by this Court.

(b) The Court may further be pleased to issue directions to the Judicial Magistrate First Class, Margao (1st Additional) not to proceed further in the Criminal Case No.905/OA/NI/2002/1 in view of the settlement arrived at between the parties on 10-10-2006.

3. To understand the controversy, a few facts are required to be stated.

4. The applicant herein is the accused against whom the complainant had filed a case under Section 138 of the

Negotiable Instruments Act, 1881(Act, for short) on account of the bouncing of a cheque which was issued to the complainant by way of repayment of the loan given by him to the accused in the sum of Rs.2,00,000/-. The accused came to be acquitted by Order dated 27-7-2004 of the learned J.M.F.C.

5. The complainant having filed an appeal before this Court, the same was allowed by Judgment/Order dated 23-8-2006 by which the accused was convicted under Section 138 of the Act and sentenced to undergo S.I. of two months and to pay compensation of Rs.2,35,000/- and in default to undergo six months S.I.

6. It appears from the copy of declaration dated 10-10-2006 filed by the accused along with the application under consideration, that the entire amount due and payable to the complainant by the accused by virtue of Judgment dated 23-8-2006 in Criminal Appeal No.54/2004 has now been received by the complainant. The complainant approached this Court with Criminal Miscellaneous Application No.332/2006 with a prayer for a direction to the accused to make the

payment of compensation awarded to the complainant, but on 11-10-2006 on behalf of the complainant, a statement was made that the compensation awarded of Rs.2,35,000/- was paid to the complainant whereupon the complainant sought leave to withdraw the application and consequently the application was dismissed as withdrawn.

7. There is no doubt that Section 147 of the Negotiable Instruments Act provides that every offence punishable under the Act is compoundable, notwithstanding anything contained in the Code. Nevertheless, the Negotiable Instruments Act, 1881 is silent as to the stage at which the said compromise can be allowed by the Court. Both the parties have placed reliance on various Judgments.

8. Mr. P. P. Singh, the learned Counsel on behalf of the accused, referring to the case of **Minu Kumari and another v. State of Bihar and others**((2006) 2 SCC(Cri)310) has submitted that the powers under Section 482 of the Code could be utilized as stated by the Apex Court, to secure the ends of justice and the ends of justice now require that the parties be allowed to

compound the offence since the compensation has been paid and the dispute as regards the cheque has been settled. The learned Counsel Mr. P. P. Singh has also placed reliance on the cases of **Suman Sethi v. Ajay K. Churiwal and another**(AIR 2000 SC 828) and **Anil Kumar Haritwal and another v. Alka Gupta and another**((2004) 4 SCC 366). There can be no dispute that any Court can compound an offence, when compoundable, when the matter is live or pending before that Court. Reliance is also placed on the case of **Goa Plast (P) Ltd. v. Chico Ursula D'Souza**(VII (2003) SLT 247) wherein the Hon'ble Supreme Court had granted one month's time to the respondent(accused) to pay a sum of Rs.80,000/-(twice the amount of the cheque) by way of Demand Draft drawn in favour of the appellant and in default to suffer S.I. for six months.

9. On the other hand, on behalf of the complainant, it is submitted that it is rather late in the day to allow an application to compound the offences and in that context, reliance is placed on several decisions, the foremost amongst them being the decision of the Allahabad High Court in the case of **Chhotey Singh and others v. State of Uttar Pradesh**(1980 CRI. L .J.

583) wherein the learned Single Judge has held that an application for compounding the offence must be made in a pending proceeding. Therefore, an application for compounding offence filed after the final disposal of appeal in High Court, cannot be entertained. Once the appeal has been finally disposed of there remains nothing pending. Further, the acceptance of such an application will result in setting aside the Judgment of the High Court. Such an alteration cannot be made in view of Section 362 of the Code which permits correction in the Judgment in respect of clerical or arithmetical errors only.

10. Reliance is also placed on the case of **Rameshbhai Somabhai Patel v. Dineshbhai Achalanand Rathi and others** (2005 ALL MR(Cri) JOURNAL 67) to highlight that the compounding has got to be done while the dispute is under adjudication. Indeed, in this case, the learned Single Judge has observed that the victim of the offence can compound the offence notwithstanding anything contained in the Code. In other words, the parties can settle the alleged criminal wrong and conclude their dispute under adjudication and request the Court where it is pending to pass appropriate order i.e. order of

acquittal. Mr. Melo has also placed reliance on the cases reported in **Mosst. Simrikhia v. Smt. Dolley Mukherjee alias Smt. Chabbi Mukherjee and another**(AIR 1990 SC 1605), **Moti Lal v. State of M.P.**(AIR 1994 SC 1544) and **Hari Singh Mann v. Harbhajan Singh Bajwa and others**(AIR 2001 SC 43) and has submitted that the review of the Judgment is not permissible under the cloak of Section 482 of the Code and the practice of filing miscellaneous petitions after disposal of the main case is unwarranted. In the first and the last of the said three decisions, the Apex Court has categorically stated that inherent powers under Section 482 cannot be exercised so as to review its own Judgment. Last but not the least, the learned Counsel on behalf of the complainant has also relied on the decision of this Court in the case of **M/s. Venus Steel Products v. Shri Michael Francis Pinheiro**(2005 ALL MR(Cri) 2753) wherein after considering several Judgments of the Apex Court this Court has stated that once a Judgment has been pronounced by the High Court either in exercise of its appellate or revisional jurisdiction, no review or revision can be entertained against that Judgment as there is no provision in the Code which would enable the

High Court to review the same or to exercise revisional jurisdiction.

11. As already stated, the applicant/accused stands convicted by this Court to undergo S.I. of two months and to pay compensation of Rs.2,35,000/- and in default to undergo six months S.I. The complainant has already received from the accused the said compensation of Rs.2,35,000/- as stated in the declaration, copy of which has been filed on behalf of the accused. The accused is yet to undergo the sentence of two months, as ordered by this Court. Firstly, I must observe that there is no application filed by both the parties which is a prerequisite for compounding the offences. Secondly, only because the complainant has subsequently received the compensation ordered to be paid by the accused, the Judgment cannot be reviewed. This Court has become functus officio after pronouncing the Judgment dated 23-8-2006 and the same cannot be reviewed, as sought by the accused in prayer(a) of the application for any reasons whatsoever except as contemplated by Section 362 of the Code. I have my respectful agreement with the observations of the learned Single Judge of Allahabad

High Court in **Chhotey Singh and others v. State of Uttar Pradesh**(supra) that an application for compounding, assuming that there was one before this Court, could be entertained only while the appeal was pending and cannot be entertained after the disposal of the appeal.

12. Consequently, I find there is no merit in this application and the same therefore is hereby dismissed. The learned trial Court to execute the sentence imposed by Judgment dated 23-8-2006 after a period of four weeks. The applicant is at liberty to approach the Hon'ble Supreme Court during the said period.

N. A. BRITTO, J.

RD